

of the landlord with such affidavit is by sec. 9⁴ to be annexed to every warrant authorizing a bailiff to distrain, which latter provision is construed to take away the right of the landlord to distrain in person, *Giles v. Ebsworth*, 10 Md. 333; and sec. 16⁵ provides that every distress made contrary to the provisions of the Article, and all sales made under or by virtue of such a distress, shall be absolutely null and void.⁶ In *Cross v. Tome*, 14 Md. 247, the Court observed that the object of these provisions was to protect the tenant from onerous and oppressive proceedings by the landlord, and to prevent the levying of excessive distresses, by requiring the sum claimed as *actually* due and in arrear to be clearly stated and verified by oath, and see this case for the contents of the account and affidavit. An account annexed to a distress warrant not stating *against whom* it was made out was held defective in *Joynes v. Wartman*, 5 Md. 195, and it was also determined that the plaintiff might rely on the defect as a bar to an avowry. And in *Giles v. Ebsworth* *supra* the Court said that the distress warrant and proceedings under it are facts to be found by the jury, and they must appear to *be correct. Interest is not recoverable on arrears of rent in pro- 45
ceedings by distress, *Longwell v. Ridinger*, 1 Gill, 57; *Dennison v. Lee*, 6 G. & J. 383, the remedy being by action of debt.

It may further be observed that if there be an excessive distress of the goods of the plaintiff and a third party a joint action cannot be maintained by them, *Bail v. Mellor*, 19 L. J. Exch. 279. The latter, however, may sue if his goods be taken. *Fisher v. Algar*, 2 C. & P. 374.⁷

⁴ Code 1911, Art. 53, sec. 9.

⁵ Code 1911, Art. 53, sec. 16.

⁶ Where the distress warrant is signed by one who is in fact the landlord's agent, the warrant is sufficient authority to the constable, although not signed in terms as agent, or for the landlord by name. And if a distress is made in the name of a landlord without precedent authority, it is validated by his subsequent adoption and ratification. *Jean v. Spurrier*, 35 Md. 110.

A warrant without the statutory affidavit is void. A constable who acts thereunder is a trespasser and is liable as such, but the sureties on his bond are not so liable as the act of the constable in such case is not *virtute officii*. *State v. Timmons*, 90 Md. 10.

⁷ Where a distress is manifestly an attempt to distrain by all the landlords and one who is entitled to a share in the rent has been omitted and one inserted who is not so entitled, this is a fatal defect in the proceedings. Distress proceedings cannot be amended. *Waring v. Slingluff*, 63 Md. 53.

CAP. XV.

In what Places Distresses shall be taken.

It shall be lawful for no	Nulli de cætero liceat ex
man from henceforth, for any	quacunque causa distractiones
manner of Cause, to take Dis-	facere extra feodum suum, nec
tresses out of his Fee, nor in	in via regia, aut in communi